

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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**BLACKSTONE GAS COMPANY**

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**D.T.E. 01-50**

**REPLY BRIEF OF**

**BLACKSTONE GAS COMPANY**

October 15, 2001





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**I.     INTRODUCTION**

Blackstone Gas Company (“Blackstone” or the “Company”) files this Reply Brief in response to the Reply Brief of the Attorney General filed on October 9, 2001, one day late.

Blackstone will not repeat the arguments set forth in its Initial Brief, but will attempt to clarify issues for the Department of Telecommunications and Energy ("Department) as necessary. In addition, because of the lengths that the Attorney General has gone to contest this case, the first rate case filed by the Company in five years, including raising several issues for the first time in its Initial Brief and others for the first time in its Reply Brief, the Company will incur rate case expenses much greater than that indicated in its most recent estimate and thus the Company files a Motion to Update Rate Case Expenses to the current rate case expense level.

A. Due Process Requires Actual Notice of Issues Prior to Completion of the Record

A rate case involves the prudence of the costs and expenses incurred by a company. However, it is not reasonable for the Company to be able to anticipate a question as to the prudence of any specific cost, expense or allocator unless it has been placed on actual notice that a specific item is questioned. In this case no party questioned the allocation of the salary and benefits of officer-employees or specifically objected to the explanation of the Company concerning metering problems with respect to the Tennessee Gas Pipeline Company meter with the Company. Neither the Attorney General nor Staff presented a witness to object to these specific items. Due process requires actual notice of the specific issues to be litigated. G.L. c 30A §§ 10 and 11.

The Attorney General in his Reply Brief at p. 2 cites *Boston Gas Company*, D.P.U. 96-50-C for the proposition that every single expense or allocator is at issue in a rate case. The *Boston Gas* case involved a Motion for Recalculation or Reconsideration and is not applicable to this case. Moreover, a standard that would require each expense or allocator to be proven, even if it is not contested on the record, is totally inappropriate and unworkable. It would burden the Company, its ratepayers and the Department with numerous days of wasted hearings where there is no question as to an expense or allocator. The Company's books and records kept in the ordinary course must be presumed correct and reasonable unless expressly put at issue.

The allocation of officers salaries to the Sales and Service affiliate was never put in issue. As noted by the Company's witness the revenue allocator used by the Company to allocate certain costs and expenses between the regulated and unregulated divisions of the Company was a very rough approximation for those costs allocated – e.g. certain office expenses. Tr. 118. With unlimited times and money the witness indicated that a more appropriate allocator for rental expense would have been based on the space occupied by each division. However, because of the size of the total rental expense such precision was foregone to save ratepayers the unnecessary expense. However, to suggest as the Attorney General does for the first time in his brief that officer salaries and benefits should be allocated on a revenue allocator is inappropriate and would unfairly reduce legitimate costs to serve natural gas customers.

If the Attorney General had specifically questioned the failure of the Company to allocate the salary and benefits of the two officers-employees, information as contained in the Affidavit of James Wojcik would have been presented. This Affidavit suggests that an allocator based on time worked for each division is a more appropriate allocator and would result in an allocation of none of the wages and benefits of Mrs. Grace Wojcik and less than 5% of the wages and benefits of Mr. James Wojcik to the Sales and Service affiliate. Moreover in the year 2001, Mr. Wojcik has been paid \$150 per week by Sales and Service, for any work for the sales and service company. This will show up in the 2001 income tax report for sales and service as a higher expense (lowering income taxes) and a lower profit. In the past, Mr. Wojcik's only compensation for the small amount of time he spent on sales and service work was his receipt of profits made by sales and service.

If the Attorney General had raised the issue of the allocation of the salary and benefits of the officer-employees during the hearing, he could have resolved any questions about the information and any claimed inconsistencies in the Annual Return and Income Tax Return during the hearing. The wild assumptions by the Attorney General are the result of his failure to properly put specific expenses or allocators at issue during the hearing, but rather raise these issues for the first time in his Brief. This denies the Company its fundamental due process right to present evidence on the issue and fails to provide for a clear and appropriate record to resolve issues. Thus, the Department should accept the Affidavit of Mr. James Wojcik and reject the allocation of officer salaries and benefits proposed by the Attorney General.

Further the Company requests that the Department incorporate by reference the last three annual cost of gas adjustment filings, including the most recent CGAC filed in September 2001, as well as the testimony and exhibits in Dockets D.T.E. 00-71 and 00-81 to provide the Department with record evidence concerning the metering difficulty of Tennessee Gas Pipeline Company.

The Company also requests that the Department re-open the case and allow additional testimony of the President of the Company on these issues including testimony about the recent meeting at the Tennessee meter station attended by representatives of Tennessee Gas Pipeline, DTE Staff and the Company. The facts support the reasonableness of the Company's position as set forth in its Initial Brief and below.

The Attorney General seems to argue that the Company should have made all efforts to correct its metering problem. As the record shows, until recently the metering problem resulted in the Company being underbilled. The Company did communicate with the pipeline their belief that the meter was erroneous. Since correcting the metering would have resulted in Blackstone being billed for and customers paying for more gas, it would seem that the pipeline and not Blackstone should have pursued this issue. The record also shows that recently the Tennessee billing errors have gone against Blackstone, and the Company has been pursuing this issue vigorously for the benefit of its ratepayers.

As all gas costs are reconciled through the CGAC, the Company does not make a profit from low or high reading of the Tennessee meter. Blackstone in all cases has tried to keep the best interests of its ratepayers in mind.

B. Revenue Requirement

1. Billing Accuracy

The Company has continually kept the Department advised of the meter problems with Tennessee Gas Pipeline as outlined in the Initial Brief of the Company. For several years the metering errors have resulted in ratepayers paying less for gas costs because the Tennessee Gas Pipeline Company meter incorrectly read the actual gas sold.



Recently the Department's Pipeline Safety Engineers attended a meeting at the meter site with the Company and representatives from Tennessee Gas Pipeline Company. The difficulties with the Tennessee meter are well known to the Department and the claim by the Attorney General that Blackstone is overbilling its customers is completely ridiculous.

The Company is currently investigating the engineering and cost of installing its own meter to verify the meter readings from Tennessee Gas Pipeline Company. Again, if this issue had been specifically raised during hearings or as a record request, Blackstone could have obtained this information by now. If feasible and cost-effective the Company plans to install such a meter to verify the Tennessee meter.

C. Post-Test Year Adjustments

The Attorney General in his Reply Brief suggests that "since the President uses the truck, and 32.9 percent of his costs should be allocated to the Sales and Service affiliate, only 32.9 percent should be considered in making any analysis of the addition to rate base." AG Reply Br. pp. 3-4.

The Attorney General has cited no Exhibit or other part of the record for his statement that the President uses the truck. Moreover, the President, and other field personnel, are on call to deal with

emergencies at all hours, and presumably does need to have the truck available in order to get to worksites. There is no evidence that the truck is used by the Sales and Service affiliate, and not even a suggestion as to why the Mr. Wojcik's ordering propane for Sales and Service would require use of any vehicle.

This argument by the Attorney General is another case where an issue is raised for the first time in Brief, but this time in his Reply Brief. The Department should not accept the totally improper argument of the Attorney General to deny the Company post-test year treatment of its transportation equipment.

D. Expense

1. Uncollectible Expense Ratio

The last winter was clearly an extraordinary time for gas companies, as all the companies in the state had to request increases in their cost of gas adjustment clauses outside of the normal time period for CGA filings. Although gas costs have been decreasing, it is also clear that the economy is in a downturn, which strongly supports the Company's position that the 3 year average for uncollectible expense will not be representative of the future.

The Company did not argue for a six-year or a thirteen month average bad debt or uncollectible expense based on the percent of write-offs to revenues as claimed by the Attorney General. The Company proposed a two year period as set forth in the pre-filed direct testimony of Lee Smith, Exh. Blackstone-1 at 10. If there is any question about this it was clarified in RR-AG-6. Based on two years the uncollectible ratio was 1.00%. The validity of this figure was demonstrated by a review of the uncollectible ratio for the last six years which was 1.02%. Company Initial Brief at 8.

The Attorney General suggested use of a three year average, which includes two years of lower than normal write-offs, is not reflective of the immediate or intermediate past and is not representative of future write-offs and should be rejected. The facts of this case require a modification of the Department's three year average standard to establish the most representative bad debt expense ratio for the Company.

## 2. Liability Insurance

The record shows that the gas company could not obtain liability insurance on its own except at a much higher cost . Company Initial Br., p. 10. The Attorney General misreads the record in claiming that most of the liability exposure is for the sales and service affiliate. Exh. AG-2-11, p.2 indicates the types of exposure for several classes. Reference to Class 13410, Gas Dealers LPG, is a reference to the gallons sold by the Sales and Service affiliate and not a dollar figure as suggested by the Attorney General.

As outlined in the Company's Initial Brief at p 10, liability insurance should not be allocated to the Sales and Service Division.

3. Officer Salaries

The Department should reject the proposed allocation of officer-employee wages and benefits based on a revenue allocator. A revenue allocator is not appropriate to allocate wages. If any allocator is utilized to allocate the wages and benefits of employee-officers it should be an allocator based on time spent working for the Sales and Service affiliate. As outlined in the Wojcik Affidavit this is zero percent for Mrs. Grace Wojcik and less than 5% for Mr. James Wojcik.

The evidence in this case does not contradict Mr. Wojcik's Affidavit. The gas company, as evidenced in its accounts, paid Mr. Wojcik \$76,113 in 2000. The accounts for 2001 will continue to reflect the gas company payment of Mr. Wojcik's salary, and will show an additional amount of \$150 per week for service which Mr. Wojcik performed for the sales and service company in hours incremental to his normal workweek plus overtime for the gas company.

4. Employees Wages Are Reasonable

In his Reply Brief the Attorney General presents cost of service adjustments that will deny recovery by the Company of wage increases granted during calendar year 2000 to its employees. As outlined in the Initial Brief of the Company at pp. 8-10, the wage level of the Company

is very modest. There are only two employees with a wage rate in excess of \$40,000 per year and their wage rates are below comparable wage levels in other utilities.

The Attorney General is arguing that Blackstone should not receive rates adequate to compensate its employees, not because its employees earn excessive salaries, but because Blackstone cannot afford to perform a formal comparative wage study. This is inconsistent with the position espoused by the Department, and sometimes, but not in this case, agreed to by the Attorney General, that small companies will not be held to the same standards of review that large companies have been held to. *See, Milford Water Company*, DTE 98-112, at p. 3. If Blackstone comes in with another rate case based on a 2001 test year, we believe these wage levels would be deemed appropriate and Blackstone would have also been entitled to a proforma rate increase at the rate of inflation or at a higher inflation rate based on filings by large utilities. As the revised rate case expenses demonstrate, such a requirement would cause a further increase rates. This is not in the best interests of ratepayers.

5. Low-Income Rates

The Attorney General objects to the deferral of additional low-income discounts or the reconciliation of such discounts through the LDAC. AG Reply Br. at p. 10.

The Company cannot be forced to provide low-income discounts without compensation. If the Attorney General does not want to allow the Company a reasonable method of recovery of such costs, the Company will withdraw its request to implement low-income rates. Failure

to allow reasonable recovery of costs would constitute confiscation of the Company's property without due process in violation of the Federal and State Constitutions.

## II. CONCLUSION

The Company attaches hereto a revised cost of service study in the same format as filed by the Attorney General to indicate the latest update of the revenue deficiency claimed by the Company. The Company requests that the Department approve the revenue deficiency indicated therein of \$141,328.

Respectfully submitted,

BLACKSTONE GAS COMPANY  
by its attorneys

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